

The Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Rm 7206  
Hearing Date: Friday, March 9, 2018  
Hearing Time: 9:30 am  
Response Date: March 2, 2018 (5 pm)

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

No. 16-11767-CMA

Interested Parties New York  
Numismatic Club, Gary Marks and  
Heidi Wastweet Limited Objection to  
Trustee's Motion For Order Approving  
the Sale of Certain of the Debtor's  
Assets Free and Clear of All Liens,  
Claims, Interests, and Encumbrances to  
Medalcraft Mint, Inc.

Comes now, New York Numismatic Club, ("NYNC"), Gary Marks ("Marks") and Heidi Wastweet ("Wastweet") Interested Parties in the above-reference matter (collectively "Interested Parties"), by and through their attorney, Michelle Carmody Kaplan, of Kaplan Law PLLC, and hereby submit this Limited Objection to Trustee's Motion For Order Approving the Sale of Certain of the Debtor's Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances to Medalcraft Mint, Inc. (Dkt. No. 1457).

**I. INCORPORATION OF PREVIOUSLY SUBMITTED OBJECTIONS**

Section 363 of the Bankruptcy Code does not provide authority for the Debtor to sell property it does not own. *See Folger Adam Sec., Inc. v. DeMatties/MacGregor, JV*, 209 F.3d

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1 252, 263 (3d Cir. 2000) (property not part of the bankruptcy estate is not subject to a section  
2 363 sale). Interested Parties have briefed the issue regarding their ownership of the dies and  
3 associated intellectual property that has been stored by debtor. Interested Parties herein adopt  
4 their objections and Supporting Declarations previously submitted to the Court: (Dkt. No. 1406  
5 – Marks and Wastweet Ojbection); (Dkt. Nos. 1407 and 1412 – Declarations of Wastweet and  
6 Marks); (Dkt. No. 1408 – Objection of NYNC); (Dkt. Nos. 1409, 1410, 1411 – Declarations  
7 of Marinescu, Miller and Anderson).  
8

## 9 II. ADDITIONAL OBJECTIONS

### 10 a. *Debtors Motion and Supporting Declarations Lack the Specificity Necessary* 11 *for Interested Parties and Other Similarly Situated Parties to Know Whether* 12 *the Sale Includes Property Not Owned by the Debtor*

13 The Motion to Sell Assets to Medalcraft lacks any detail that would identify what dies  
14 or associated property are being included as part of the sale. It is unclear whether any or all of  
15 the property that Interested Parties claim ownership of is included in the sale. As of the date  
16 of this Objection, none of the Interested Parties have received the Court mandated notice of  
17 the sale. As it relates to the lack of specificity in both the Motion and the APA with  
18 Medalcraft, Interested Parties make the following objections.

19 1. In the Motion, the Trustee refers to “the Medallic trade name, website,  
20 customer lists, archives, tools, specific machinery, certain company owned Medallic dies and  
21 other property”. (Dkt. No. 1457, p. 1). The distinction between what is part of the “Medallic”  
22 asserted assets and NWTM assets, or if there is a distinction, is unclear at best. The Trustee  
23 should be required to specifically identify any distinctions between what is being sold as  
24 “Medallic” and what is considered NWTM, if there even is such a distrinction.  
25  
26

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1           2.     The proposed APA with Medalcraft identifies the Assets being  
2 purchased in Section 1.1. (Dkt. No. 1462-1, p. A-1) The following categorized “Assets” need  
3 to be clarified and specifically identified in order for Interested Parties to know whether they  
4 include property owned by the Interested Parties.

5  
6                   **(b) Medallic marketing materials and image library**

7           Both the marketing materials and image library likely include copyrighted material of  
8 Interested Parties. For example, the Municipal Coins & Medallions page of the Medallic Art  
9 Company webpage includes a picture of the City of Whitefish, Montana Centennial Coin  
10 designed by Marks. *See* Marks Supplement Declaration, Exhibit J. Compare this to the Die  
11 that was returned to Marks, *Marks Declaration* (Dkt. No. 1412, Exhibit D). Marks does not  
12 consent to the transfer or display of his designed Whitefish coin and does not consent to any  
13 license or transfer of his copyright in the artwork. *Marks Supp. Decl.* page 1.

14  
15           There are literally thousands of images contained in the marketing materials and image  
16 library. Trustee has not alleged that the Debtor has any rights or interests in the copyrighted  
17 works that may be contained in the library. Again, consistent with the supplemental briefing  
18 on intellectual property and copyright law, the Debtor does not have the right to transfer the  
19 right to display even if it can transfer the pictures themselves.

20  
21                   **(d) Medallic archives, written files, electronic files (ACT  
22 database) and reproduction samples.**

23           Of all the categories, this section has the most associated danger to the artists and  
24 customers that have done business with the Debtor in the past.

1 **Reproduction Samples**

2 Interested Parties assume that this category refers to what is called “Specimens” in the  
3 industry. On information and belief, Debtor, and Medallic Art Company before them, would  
4 strike one extra medal with every run. These “specimens” are then kept in drawers at Medallic  
5 Art Company. This means that for limited edition runs of 100 medals may be increased to 101  
6 if Debtor is allowed to sell them.  
7

8 However, Debtor has not and cannot allege it has the legal authority to sell these  
9 Specimens. The copyright and artwork belongs to either the customer or the artist, but not to  
10 the Debtor. At the very least, Debtor should be required to provide the Court and Interested  
11 Parties a digital copy of the “Specimen Book” that identifies each of the Specimens and  
12 identifies the dies used to create them.  
13

14 **Medallic Archives**

15 Neither the Motion to approve the APA, the APA itself, or the supporting Declarations  
16 identify what is included in the Medallic Archives. Does this include historic bas-relief sculptures  
17 used to create dies? If so, Interested Parties object to the sale of its copyrighted material. Does  
18 it include galvanos (metal shells which replicate a bas-relief design)? If so, Interested Parties  
19 object to the sale of its copyrighted material. If it includes drawings, concepts, pictures (for  
20 example a photograph of one of the former Presidents of the New York Numismatic Club),  
21 then Interested Parties object to the sale of its copyrighted material and intellectual property.  
22

23 **Written Files and Electronic Files (ACT database)**

24 Interested Parties can only assume that the written files and electronic files of the  
25 Debtor include protected copyrighted material. Even if this material can be sold by Debtor,  
26

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1 the purchaser cannot acquire any rights of display or reproduction of any copyrighted material  
2 that might be included in the written files or electronic files. Any sale would need to be subject  
3 to the copyright owners' rights, and not free and clear.

4 (f) **Medallic Company owned Dies, Trim Tools and Associated**  
5 **Racks associated with any customer for which there has been**  
6 **a sale within the past twenty years**

7 It is unclear what "Associated Racks" means in this context. It likely does not mean  
8 just the shelving. Does it mean Racks of galvanos, sculpts, specimens, etc.? Interested Parties  
9 object to the extent it includes any of these items. Additionally "Medallic Company owned  
10 Dies" is too vague to understand. The Debtor has the ability to provide an excel spreadsheet  
11 identifying each and every die that is contained in the Medallic Art Company Die Library.<sup>1</sup>

12 Ultimately, the APA with Medalcraft does not give adequate notice to Interested Parties  
13 as to what is being sold and what is included in the proposed sale. Debtor has not provided  
14 adequate notice to potential holders of copyrights that may have become fixed earlier than  
15 1977. Due process requires that a party seeking relief must give "notice reasonably calculated,  
16 under all the circumstances, to apprise interested parties of the pendency of the action and  
17 afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank &*  
18 *Trust Co.*, 339 U.S. 306, 314 (1950). The bankruptcy code "requires the trustee or debtor in  
19 possession to provide parties in interest with adequate notice and an opportunity to be heard  
20 before their interests may be adversely affected. *Western Auto Supply Co. v. Savage Arms,*  
21 *Inc. (In re Savage Indus., Inc.)*, 43 F.3d 714, 720 (1<sup>st</sup> Cir. 1994). Section 363(f) requires notice  
22  
23  
24

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25 <sup>1</sup> Additional Objections will be filed before the March 8, 2018 deadline and those Objections will include  
26 Declarations explaining the organization of the Die Library as well as the Excel Spreadsheet and InDesign  
database that were used to categorize the Die Library.

1 and a hearing before assets can be sold outside of the ordinary course of business.

2 *a. Objections Specific to Interested Parties.*

3 Interested Party NYNC objects to the proposed sale to Medalcraft to the extent it includes  
4 any of the following property of NYNC: Any property, including but not limited to dies,  
5 Specimens, galvanos, sculpts, drawings, sketches, pictures, images (stored digitally or in hard  
6 copy), or other digitally stored information, referring or related to the Presidential Medal Series  
7 of the NYNC or identified as belonging to or originating from the NYNC.  
8

9 Specifically, NYNC objects to the sale to the extent it includes galvanos, sculpts,  
10 Specimens or other property related to the dies located at Medallie Art as of 2016 as set forth in  
11 the Supplemental Declaration of Dr. Constantin Marinescu, Exhibit A.  
12

13 Interested Parties Marks and Wastweet specifically object to the sale of dies specifically  
14 identified in their previous objections, as well as any Specimens, sculpts, drawings, or digitally  
15 stored images related to their copyrighted property and other intellectual property.  
16

17 DATED this 2nd day of March 2018.

18 **KAPLAN LAW PLLC**

19  
20 By /s/ Michelle Carmody Kaplan  
21 Michelle Carmody Kaplan  
22 WSBA No. 27286  
23 Attorney for New York Numismatic  
24 Club  
25  
26

New York Numismatic Club, Marks, Wastweet's  
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